

MONTANA LEGISLATIVE HISTORY

Chapter 322 1995

Bill H 472 S _____ Original bill & history LC

H. Committee on Natural Resource S. Committee on Natural Resources

Hearing Date(s)	_____	_____C	Hearing Date(s)	_____	_____C
	<u>2/23</u>	<u>LC</u>		<u>3/15</u>	<u>✓C</u>
	_____	_____C		_____	_____C
	_____	_____C		_____	_____C
Date Out	<u>2/23</u>	<u>✓C</u>	out	<u>3/20</u>	<u>✓</u>

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

DIED IN COMMITTEE

HB 471 INTRODUCED BY SIMPKINS, ET AL.
 EXTEND TERMINATION DATE OF THE COMMITTEE ON PUBLIC EMPLOYEE
 RETIREMENT SYSTEMS
 BY REQUEST OF THE COMMITTEE ON PUBLIC EMPLOYEE RETIREMENT
 SYSTEMS

2/08	INTRODUCED		
2/08	FIRST READING		
2/08	REFERRED TO APPROPRIATIONS		
2/09	FISCAL NOTE REQUESTED		
2/13	FISCAL NOTE RECEIVED		
2/15	FISCAL NOTE PRINTED		
3/13	HEARING		
3/21	TABLED IN COMMITTEE		
3/24	(MISSED TRANSMITTAL DEADLINE FOR 67TH DAY)		
4/08	2ND READING PASSED AS AMENDED	90	5
4/08	3RD READING PASSED	86	7
	TRANSMITTED TO SENATE		
4/10	ALLOWED BILL TO BE CONSIDERED AFTER THE TRANSMITTAL DEADLINE	47	0
4/11	FIRST READING		
4/11	REFERRED TO STATE ADMINISTRATION		
4/11	HEARING		
4/12	COMMITTEE REPORT—BILL CONCURRED		
4/12	2ND READING CONCURRED	48	1
4/13	3RD READING CONCURRED	48	2
	TRANSMITTED TO HOUSE		
4/18	SIGNED BY SPEAKER		
4/18	SIGNED BY PRESIDENT		
4/18	TRANSMITTED TO GOVERNOR		
4/26	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 552		
	EFFECTIVE DATE: 04/26/95		

HB 472 INTRODUCED BY KNOX, ET AL.
 ALLOW AN EXISTING APPROPRIATIVE WATER RIGHT TO BE TEMPORARILY
 CHANGED TO INSTREAM FLOW TO BENEFIT THE FISHERY RESOURCE

2/08	INTRODUCED		
2/08	FIRST READING		
2/08	REFERRED TO NATURAL RESOURCES		
2/09	FISCAL NOTE REQUESTED		
2/13	HEARING		
2/14	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/15	FISCAL NOTE RECEIVED		
2/15	FISCAL NOTE PRINTED		
2/17	2ND READING PASSED	93	6
2/18	3RD READING PASSED	89	10
	TRANSMITTED TO SENATE		
2/21	FIRST READING		
2/21	REFERRED TO NATURAL RESOURCES		
3/15	HEARING		
3/21	COMMITTEE REPORT—BILL CONCURRED		
3/25	2ND READING CONCURRED	30	14
3/27	3RD READING CONCURRED	35	14
	RETURNED TO HOUSE		
3/28	SIGNED BY SPEAKER		

3/28 SIGNED BY PRESIDENT
 3/29 TRANSMITTED TO GOVERNOR
 3/31 SIGNED BY GOVERNOR
 CHAPTER NUMBER 322
 EFFECTIVE DATE: 10/01/95

HB 473 INTRODUCED BY KNOX, ET AL.
 GENERALLY REVISE LOCAL SUBDIVISION LAWS

2/08	INTRODUCED		
2/08	FIRST READING		
2/08	REFERRED TO NATURAL RESOURCES		
2/09	SPONSOR FISCAL NOTE REQUESTED		
2/13	HEARING		
2/15	FISCAL NOTE RECEIVED		
2/16	FISCAL NOTE PRINTED		
2/17	COMMITTEE REPORT—BILL PASSED		
2/20	2ND READING PASSED	67	29
2/21	3RD READING PASSED	72	28
	TRANSMITTED TO SENATE		
2/27	FIRST READING		
2/27	REFERRED TO NATURAL RESOURCES		
3/15	HEARING		
3/24	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/29	2ND READING CONCURRED AS AMENDED	26	23
3/30	3RD READING CONCURRED	27	23
	RETURNED TO HOUSE WITH AMENDMENTS		
4/04	2ND READING AMENDMENTS CONCURRED	83	13
4/05	3RD READING AMENDMENTS CONCURRED	73	25
4/07	SIGNED BY SPEAKER		
4/08	SIGNED BY PRESIDENT		
4/10	TRANSMITTED TO GOVERNOR		
4/14	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 468		
	EFFECTIVE DATE: 10/01/95		

HB 474 INTRODUCED BY COBB
 PROVIDE FOR JUVENILE PROBATION OFFICER TRAINING

2/08	INTRODUCED		
2/08	FIRST READING		
2/08	REFERRED TO JUDICIARY		
2/09	FISCAL NOTE REQUESTED		
2/13	HEARING		
2/14	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/15	FISCAL NOTE RECEIVED		
2/16	FISCAL NOTE PRINTED		
2/17	2ND READING PASSED	100	0
2/18	3RD READING PASSED	97	2
	TRANSMITTED TO SENATE		
2/21	FIRST READING		
2/21	REFERRED TO JUDICIARY		
3/07	HEARING		
3/08	COMMITTEE REPORT—BILL CONCURRED		
3/11	2ND READING CONCURRED	39	0
3/13	3RD READING CONCURRED	47	2
	RETURNED TO HOUSE		
3/15	SIGNED BY SPEAKER		
3/18	SIGNED BY PRESIDENT		
3/20	TRANSMITTED TO GOVERNOR		

1
2 INTRODUCED BY Knox Gustafson Hager Snowden ORR
3 Raney Hertel Skinner Rehbein Swanson Oke Beard
4 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING AN EXISTING APPROPRIATIVE WATER RIGHT TO
5 BE TEMPORARILY CHANGED TO INSTREAM FLOW TO BENEFIT THE FISHERY RESOURCE; ESTABLISHING
6 ADDITIONAL CRITERIA FOR AND LIMITATIONS ON CHANGES TO INSTREAM FLOW TO BENEFIT THE
7 FISHERY RESOURCE; AMENDING SECTIONS 85-2-402 AND, 85-2-407, MCA; AND PROVIDING A
8 TERMINATION DATE." GRINOE Foster Storall Heintz
9 Bel Brown Hart

10 STATEMENT OF INTENT

11 This legislation, jointly developed by representatives from the agricultural, recreation, and
12 conservation communities, is intended to authorize the temporary use of existing water rights for instream
13 flow to benefit the fishery resource. In establishing the use of water rights for authorized instream flow
14 to benefit the fishery resource, it is the intent of the legislature that the authorization respect and work
15 within the prior appropriation water rights system.

16 This legislation creates an opportunity for citizens to voluntarily enter into agreements to lease
17 existing water rights to protect fisheries and allows persons who own water rights to change the use of
18 that water to instream flow to benefit the fishery resource.

19 To monitor and review the implementation of this instream flow program, the legislature directs the
20 office of the governor, to convene, on an ongoing and regular basis, a working group that includes
21 representatives from the agricultural, recreation, and conservation communities. This working group shall
22 consult with the department of natural resources and conservation on relevant changes in water use and
23 shall submit a report to the governor and the legislature in 2001 outlining the status of the program.

24
25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

26
27 NEW SECTION. Section 1. Temporary change authorization for instream flow -- additional
28 requirements. (1) The department shall accept and process an application for a temporary change in
29 appropriation rights to maintain or enhance instream flow to benefit the fishery resource under the
30 provisions of 85-2-402, 85-2-407, and this section.

(2) (a) A temporary change authorization under the provisions of this section is allowable only if the owner of the water right voluntarily agrees to:

(i) change the purpose of a consumptive use water right to instream flow for the benefit of the fishery resource; or

(ii) lease a consumptive use water right to another person for instream flow to benefit the fishery resource.

(b) For the purpose of this section, "person" means and is limited to an individual, association, partnership, or corporation.

(3) In addition to the requirements of 85-2-402 and 85-2-407, an applicant for a change authorization under this section shall prove by a preponderance of evidence that:

(a) the temporary change authorization for water to maintain and enhance instream flow to benefit the fishery resource, as measured at a specific point, will not adversely affect the water rights of other persons; and

(b) the amount of water for the proposed use is needed to maintain or enhance instream flows to benefit the fishery resource.

(4) The department shall approve the method of measurement of the water to maintain and enhance instream flow to benefit the fishery resource through a temporary change authorization as provided in this section.

(5) For the purpose of identifying and consulting with individuals or groups that may be affected by the proposed change authorization, the applicant shall, 30 days before submitting the application to the department, publish notice of the proposed change authorization in a local newspaper of general circulation in the county or counties affected.

(6) Only the owner of the water right may seek enforcement of the temporary change authorization or object under 85-2-308.

(7) A temporary change authorization under this section does not create a right of access across private property or any infringement of private property rights.

Section 2. Section 85-2-402, MCA, is amended to read:

"85-2-402. (Temporary) Changes in appropriation rights. (1) An appropriator may not make a change in an appropriation right except, as permitted under this section, by applying for and receiving the

1 approval of the department or, if applicable, of the legislature. An applicant shall submit a correct and
2 complete application.

3 (2) Except as provided in subsections (4) through (6), the department shall approve a change in
4 appropriation right if the appropriator proves by a preponderance of evidence that the following criteria are
5 met:

6 (a) The proposed use will not adversely affect the water rights of other persons or other planned
7 uses or developments for which a permit has been issued or for which water has been reserved.

8 (b) Except for a lease authorization pursuant to 85-2-436 ~~that~~ or a temporary change authorization
9 for instream use to benefit the fishery resource pursuant to [section 1] when either authorization does not
10 require appropriation works, the proposed means of diversion, construction, and operation of the
11 appropriation works are adequate.

12 (c) The proposed use of water is a beneficial use.

13 (d) ~~The~~ Except for a lease authorization pursuant to 85-2-436 or a temporary change authorization
14 pursuant to [section 1] for instream flow to benefit the fishery resource, the applicant has a possessory
15 interest, or the written consent of the person with the possessory interest, in the property where the water
16 is to be put to beneficial use.

17 (e) If the change in appropriation right involves salvaged water, the proposed water-saving methods
18 will salvage at least the amount of water asserted by the applicant.

19 (f) The water quality of an appropriator will not be adversely affected.

20 (g) The ability of a discharge permit holder to satisfy effluent limitations of a permit issued in
21 accordance with Title 75, chapter 5, part 4, will not be adversely affected.

22 (3) The applicant is required to prove that the criteria in subsections (2)(f) and (2)(g) have been met
23 only if a valid objection is filed. A valid objection must contain substantial credible information establishing
24 to the satisfaction of the department that the criteria in subsection (2)(f) or (2)(g), as applicable, may not
25 be met.

26 (4) The department may not approve a change in purpose of use or place of use of an appropriation
27 of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the
28 appropriator proves by a preponderance of evidence that:

29 (a) the criteria in subsection (2) are met;

30 (b) the proposed change is a reasonable use. A finding of reasonable use must be based on a

1 consideration of:

2 (i) the existing demands on the state water supply, as well as projected demands for water for
3 future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows
4 for the protection of existing water rights and aquatic life;

5 (ii) the benefits to the applicant and the state;

6 (iii) the effects on the quantity and quality of water for existing uses in the source of supply;

7 (iv) the availability and feasibility of using low-quality water for the purpose for which application
8 has been made;

9 (v) the effects on private property rights by any creation of or contribution to saline seep; and

10 (vi) the probable significant adverse environmental impacts of the proposed use of water as
11 determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

12 (5) The department may not approve a change in purpose of use or place of use for a diversion that
13 results in 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water being
14 consumed unless:

15 (a) the applicant proves by clear and convincing evidence and the department finds that the criteria
16 in subsections (2) and (4) are met; and

17 (b) the department then petitions the legislature and the legislature affirms the decision of the
18 department after one or more public hearings.

19 (6) (a) The state of Montana has long recognized the importance of conserving its public waters
20 and the necessity to maintain adequate water supplies for the state's water requirements, including
21 requirements for reserved water rights held by the United States for federal reserved lands and in trust for
22 the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that,
23 under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict
24 with the public welfare of its citizens or the conservation of its waters, the following criteria must be met
25 before out-of-state use may occur:

26 (b) The department and, if applicable, the legislature may not approve a change in appropriation
27 right for the withdrawal and transportation of appropriated water for use outside the state unless the
28 appropriator proves by clear and convincing evidence and, if applicable, the legislature approves after one
29 or more public hearings that:

30 (i) depending on the volume of water diverted or consumed, the applicable criteria and procedures

of subsection (2) or (4) are met;

(ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(c) In determining whether the appropriator has proved by clear and convincing evidence that the requirements of subsections (6)(b)(ii) and (6)(b)(iii) will be met, the department and, if applicable, the legislature shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the proposed change in appropriation might feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(d) When applying for a change in appropriation right to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation and use of water.

(7) For any application for a change in appropriation right involving 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water, the department shall give notice of the proposed change in accordance with 85-2-307 and shall hold one or more hearings in accordance with 85-2-309 prior to its approval or denial of the proposed change. The department shall provide notice and may hold one or more hearings upon any other proposed change if it determines that a change might adversely affect the rights of other persons.

(8) The department or the legislature, if applicable, may approve a change subject to terms, conditions, restrictions, and limitations as it considers necessary to satisfy the criteria of this section, including limitations on the time for completion of the change. The department may extend time limits specified in the change approval under the applicable criteria and procedures of 85-2-312(3).

(9) Upon actual application of water to the proposed beneficial use within the time allowed, the appropriator shall notify the department that the appropriation has been completed. The notification must contain a certified statement by a person with experience in the design, construction, or operation of

1 appropriation works describing how the appropriation was completed.

2 (10) If a change is not completed as approved by the department or legislature or if the terms,
3 conditions, restrictions, and limitations of the change approval are not complied with, the department may,
4 after notice and opportunity for hearing, require the appropriator to show cause why the change approval
5 should not be modified or revoked. If the appropriator fails to show sufficient cause, the department may
6 modify or revoke the change approval.

7 (11) The original of a change approval issued by the department must be sent to the applicant, and
8 a duplicate must be kept in the office of the department in Helena.

9 (12) A person holding an issued permit or change approval that has not been perfected may change
10 the place of diversion, place of use, purpose of use, or place of storage by filing an application for change
11 pursuant to this section.

12 (13) A change in appropriation right contrary to the provisions of this section is invalid. An officer,
13 agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner an
14 unauthorized change in appropriation right. A person or corporation may not, directly or indirectly,
15 personally or through an agent, officer, or employee, attempt to change an appropriation right except in
16 accordance with this section.

17 (14) The department may adopt rules to implement the provisions of this section. (Terminates June
18 30, 1999--sec. 4, Ch. 740, L. 1991.)

19 **85-2-402. (Effective July 1, 1999) Changes in appropriation rights.** (1) An appropriator may not
20 make a change in an appropriation right except, as permitted under this section, by applying for and
21 receiving the approval of the department or, if applicable, of the legislature. An applicant shall submit a
22 correct and complete application.

23 (2) Except as provided in subsections (4) through (6), the department shall approve a change in
24 appropriation right if the appropriator proves by a preponderance of evidence that the following criteria are
25 met:

26 (a) The proposed use will not adversely affect the water rights of other persons or other planned
27 uses or developments for which a permit has been issued or for which water has been reserved.

28 (b) The Except for a temporary change authorization pursuant to [section 1] that does not require
29 appropriation works, the proposed means of diversion, construction, and operation of the appropriation
30 works are adequate.

1 (c) The proposed use of water is a beneficial use.

2 (d) ~~The~~ Except for a temporary change authorization pursuant to [section 1] for instream flow to
3 benefit the fishery resource, the applicant has a possessory interest, or the written consent of the person
4 with the possessory interest, in the property where the water is to be put to beneficial use.

5 (e) If the change in appropriation right involves salvaged water, the proposed water-saving methods
6 will salvage at least the amount of water asserted by the applicant.

7 (f) The water quality of an appropriator will not be adversely affected.

8 (g) The ability of a discharge permit holder to satisfy effluent limitations of a permit issued in
9 accordance with Title 75, chapter 5, part 4, will not be adversely affected.

10 (3) The applicant is required to prove that the criteria in subsections (2)(f) and (2)(g) have been met
11 only if a valid objection is filed. A valid objection must contain substantial credible information establishing
12 to the satisfaction of the department that the criteria in subsection (2)(f) or (2)(g), as applicable, may not
13 be met.

14 (4) The department may not approve a change in purpose of use or place of use of an appropriation
15 of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the
16 appropriator proves by a preponderance of evidence that:

17 (a) the criteria in subsection (2) are met;

18 (b) the proposed change is a reasonable use. A finding of reasonable use must be based on a
19 consideration of:

20 (i) the existing demands on the state water supply, as well as projected demands for water for
21 future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows
22 for the protection of existing water rights and aquatic life;

23 (ii) the benefits to the applicant and the state;

24 (iii) the effects on the quantity and quality of water for existing uses in the source of supply;

25 (iv) the availability and feasibility of using low-quality water for the purpose for which application
26 has been made;

27 (v) the effects on private property rights by any creation of or contribution to saline seep; and

28 (vi) the probable significant adverse environmental impacts of the proposed use of water as
29 determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

30 (5) The department may not approve a change in purpose of use or place of use for a diversion that

1 results in 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water being
2 consumed unless:

3 (a) the applicant proves by clear and convincing evidence and the department finds that the criteria
4 in subsections (2) and (4) are met; and

5 (b) the department then petitions the legislature and the legislature affirms the decision of the
6 department after one or more public hearings.

7 (6) (a) The state of Montana has long recognized the importance of conserving its public waters
8 and the necessity to maintain adequate water supplies for the state's water requirements, including
9 requirements for reserved water rights held by the United States for federal reserved lands and in trust for
10 the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that,
11 under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict
12 with the public welfare of its citizens or the conservation of its waters, the following criteria must be met
13 before out-of-state use may occur:

14 (b) The department and, if applicable, the legislature may not approve a change in appropriation
15 right for the withdrawal and transportation of appropriated water for use outside the state unless the
16 appropriator proves by clear and convincing evidence and, if applicable, the legislature approves after one
17 or more public hearings that:

18 (i) depending on the volume of water diverted or consumed, the applicable criteria and procedures
19 of subsection (2) or (4) are met;

20 (ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

21 (iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the
22 citizens of Montana.

23 (c) In determining whether the appropriator has proved by clear and convincing evidence that the
24 requirements of subsections (6)(b)(ii) and (6)(b)(iii) will be met, the department and, if applicable, the
25 legislature shall consider the following factors:

26 (i) whether there are present or projected water shortages within the state of Montana;

27 (ii) whether the water that is the subject of the proposed change in appropriation might feasibly
28 be transported to alleviate water shortages within the state of Montana;

29 (iii) the supply and sources of water available to the applicant in the state where the applicant
30 intends to use the water; and

1 (iv) the demands placed on the applicant's supply in the state where the applicant intends to use
2 the water.

3 (d) When applying for a change in appropriation right to withdraw and transport water for use
4 outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing
5 the appropriation and use of water.

6 (7) For any application for a change in appropriation right involving 4,000 or more acre-feet of
7 water a year and 5.5 or more cubic feet per second of water, the department shall give notice of the
8 proposed change in accordance with 85-2-307 and shall hold one or more hearings in accordance with
9 85-2-309 prior to its approval or denial of the proposed change. The department shall provide notice and
10 may hold one or more hearings upon any other proposed change if it determines that such a change might
11 adversely affect the rights of other persons.

12 (8) The department or the legislature, if applicable, may approve a change subject to such terms,
13 conditions, restrictions, and limitations as it considers necessary to satisfy the criteria of this section,
14 including limitations on the time for completion of the change. The department may extend time limits
15 specified in the change approval under the applicable criteria and procedures of 85-2-312(3).

16 (9) Upon actual application of water to the proposed beneficial use within the time allowed, the
17 appropriator shall notify the department that the appropriation has been completed. The notification must
18 contain a certified statement by a person with experience in the design, construction, or operation of
19 appropriation works describing how the appropriation was completed.

20 (10) If a change is not completed as approved by the department or legislature or if the terms,
21 conditions, restrictions, and limitations of the change approval are not complied with, the department may,
22 after notice and opportunity for hearing, require the appropriator to show cause why the change approval
23 should not be modified or revoked. If the appropriator fails to show sufficient cause, the department may
24 modify or revoke the change approval.

25 (11) The original of a change approval issued by the department must be sent to the applicant, and
26 a duplicate must be kept in the office of the department in Helena.

27 (12) A person holding an issued permit or change approval that has not been perfected may change
28 the place of diversion, place of use, purpose of use, or place of storage by filing an application for change
29 pursuant to this section.

30 (13) A change in appropriation right contrary to the provisions of this section is invalid. An officer,

agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner an unauthorized change in appropriation right. A person or corporation may not, directly or indirectly, personally or through an agent, officer, or employee, attempt to change an appropriation right except in accordance with this section.

(14) The department may adopt rules to implement the provisions of this section."

Section 3. Section 85-2-407, MCA, is amended to read:

"85-2-407. Temporary changes in appropriation right. (1) An appropriator may not make a temporary change in appropriation right for ~~his~~ the appropriator's use or another's use except with department approval in accordance with 85-2-402 and this section.

(2) A temporary change in appropriation right may be approved for a period not to exceed 10 years. A temporary change in appropriation right may be approved for consecutive or intermittent use.

(3) An authorization for a temporary change in appropriation right may be renewed by the department for a period not to exceed 10 years. Renewal of an authorization for a temporary change in appropriation right requires application to the department by the appropriator. Upon application, the department shall notify other appropriators potentially affected by the renewal and shall allow 30 days for submission of new evidence of adverse effects to other water rights. A temporary change authorization may not be renewed by the department if it determines that the right of an appropriator, other than an appropriator described in subsection (7), is adversely affected.

(4) During the term of the original temporary change authorization, the department may modify or revoke its authorization for a temporary change if it determines that the right of an appropriator, other than an appropriator described in subsection (7), is adversely affected. Except for objections during the initial temporary change application process and objections during the temporary change renewal process, an appropriator may object once during the term of a temporary change permit.

(5) The priority of appropriation for a temporary change in appropriation right is the same as the priority of appropriation of the right that is temporarily changed.

(6) Neither a change in appropriation right nor any other authorization right is required for reversion of the appropriation right to the permanent purpose, place of use, point of diversion, or place of storage after the period for which a temporary change was authorized expires.

(7) A person issued a water use permit with a priority of appropriation after the date of filing of

1 an application for a temporary change in appropriation right under this section may not object to the
2 exercise of the temporary change according to its terms, the renewal of the authorization for the temporary
3 change, or the reversion of the appropriation right to its permanent purpose, place of use, point of
4 diversion, or place of storage. Persons described in this subsection must be notified of the existence of any
5 temporary change authorizations from the same source of supply.

6 (8) If a water right for which a temporary change has been approved is transferred as an
7 appurtenance of real property, the temporary change remains in effect unless another change in
8 appropriation right is authorized by the department."

9
10 NEW SECTION. **Section 4. Temporary change validity -- limitations.** All temporary changes
11 authorized under [section 1] entered into prior to June 30, 2005, remain valid until the expiration date of
12 the temporary change. A temporary change authorized under [section 1] may not be renewed or otherwise
13 extended after June 30, 2005.

14
15 NEW SECTION. **Section 5. Codification instruction.** [Sections 1 and 4] are intended to be codified
16 as an integral part of Title 85, chapter 2, part 4, and the provisions of Title 85, chapter 2, part 4, apply to
17 [sections 1 and 4].

18
19 NEW SECTION. **Section 6. Termination.** [Sections 1, 2, and 4] terminate June 30, 2005.

20 -END-

HOUSE NATURAL RESOURCES

Page 3

- BILL NO - REFERRED - HEARING - OTHER CONSIDERATION DATES - EXECUTIVE ACTION/DATE/VOTE - REREFERRED - DATE READ

HB0411	ORR, SCOTT		CLARIFY THE CLEAN WATER ACT 401 NATIONWIDE PERMIT REQUIREMENTS				
	2/02	2/08		DO PASS	2/10	VOTE: 12-6	2/13
HB0412	ORR, SCOTT		ENVIRONMENTAL SELF-EVALUATION REPORT, DISCLOSURE, AND PROTECTIONS				
	2/02	2/08		PASS AS AMENDED	2/13	VOTE: 16-2	2/14
HB0430	BOHLINGER, JOHN		SET UNIFORM STATE AMBIENT AIR QUALITY STANDARDS FOR SULPHUR DIOXIDE				
	2/04	2/13		TABLED ON	02/17	VOTE: 11-7	
HB0441	TAYLOR, LILA		REVISE DEFINITION OF FACILITY UNDER MMFSA				
	2/04		CANCELLED			VOTE:	
HB0472	KNOX, DICK		INSTREAM FLOW -- AUTHORIZATIONS -- LIMITATIONS				
	2/08	2/13		PASS AS AMENDED	2/13	VOTE: 18-0	2/14
HB0473	KNOX, DICK		SUBDIVISION REVISION				
	2/08	2/13		DO PASS	2/17	VOTE: 12-6	2/17
HB0478	STORY, ROBERT		310 PERMIT REVISIONS				
	2/08	2/13		PASS AS AMENDED	2/13	VOTE: 17-1	2/14
HB0483	ELLIS, ALVIN		WITHDRAW DISCLAIMER OF RIGHT AND TITLE TO UNAPPROPRIATED PUBLIC LAND				
	2/08	2/13		TABLED ON	02/13	VOTE: 14-4	
HB0489	GRADY, ED		ALLOW SALE/EXCHANGE OF CERTAIN STATE LANDS; COMMUNITY OR PUBLIC USE FACTORS				
	2/09	2/15		PASS AS AMENDED	2/15	VOTE: 17-0	2/16
HB0508	HURDLE, JOAN		REQUIRE SULPHUR DIOXIDE MONITORING AND REPORTING				
	2/09	2/15		TABLED ON	02/15	VOTE: 12-5	
HB0521	WAGNER, DOUGLAS		REQUIRE STATE AND LOCAL AGENCIES TO JUSTIFY ENVIRONMENTAL STANDARDS				
	2/11	2/15	Postponed 2/17	PASS AS AMENDED	3/13	VOTE: 11-7	3/15
HB0538	EWER, DAVID		PRIVATE PROPERTY PROTECTION VIA CITIZEN SUIT UNDER WATER QUALITY LAWS				
	2/13	2/15		TABLED ON	02/17	VOTE: 12-6	

Tape 1, Side A

HEARING ON HB 472

Opening Statement by Sponsor:

REP. DICK KNOX, House District 93, Winifred, said the people who worked on the Consensus Council for HB 472 were Bob Hanson, Montana Farm Bureau, John Bloomquist, Montana Stockgrowers Association, Mike Murphy, Montana Water Resources Association, REP. ROBERT STORY, Mike Voleski, Montana Association of Conservation Districts, Bruce Farling, Montana Trout Unlimited, Jim Richards, Montana Wildlife Federation and Alan Rollo, Montana Wildlife Federation. Matt McKinney, Director, Montana Consensus Council, worked with the group. During the first meeting in July 1994 the participants agreed to explore opportunities for a cooperative resolution to the issue of instream flow protection. During the next several months the group met numerous times and spent countless hours debating the pros and cons of different ways to protect and enhance instream flow. Throughout the negotiation process the participants went back to their respective organizations to give progress reports and receive additional direction. The efforts of the group were discussed at the annual meeting of each organization. HB 472 represents the culmination of an enormous amount of work by the participants and their organizations. REP. KNOX said he would leave explanation of the bill to the proponents.

Proponents' Testimony:

Robert Hanson, Board of Directors, Montana Farm Bureau, said he was a participant in the drafting of HB 472. The problem of how to handle instream flows has plagued both the environmental community and the agricultural community. HB 472 protects both the environmental community and the agricultural community.

Art Whitney, Montana Chapter of the American Fisheries Society. Written testimony. EXHIBIT 1

John Bloomquist, Attorney, Montana Stockgrowers Association said attempts in the past to resolve disputes over the issue of instream flow have generally been unsuccessful. The bill proposes two ways that water can be recognized for instream use to benefit the fisheries. The first would be a voluntary mechanism where a water right owner could leave the water instream, file a temporary change in use application and attempt to get approval of the application. Within that process there are several safeguards for other water users. The second mechanism for leaving water instream and having it recognized would be a temporary lease which could be negotiated by any individual, corporation, partnership or association. Presently the Department of Fish, Wildlife and Parks can lease certain waters for instream use. There has been a great deal of frustration over this process, not only from the instream

advocates, but also from those that think leasing is a good way to go. At the end of the lease period or at the end of the time that someone wants to leave it instream, the water right would revert back to its original use. The owner of the water right, if it's a leased situation, would be the one that administers the water right, so the person who has historically dealt with his neighbors on the source would still be the one that would do that. There are several safeguards for other water users which allows them to object to a temporary change application.

Bruce Farling, Director, Montana Trout Unlimited, said his organization saw this legislation as an additional opportunity to work with agriculture on a cooperative basis for providing instream flow in certain instances in Montana. The bill won't solve every problem but it is a historical step forward.

Mike Murphy, Montana Water Resources Association. Written testimony. EXHIBIT 2

Larry Brown, Agricultural Preservation Association, supported HB 472.

Alan Rollo, Montana Wildlife Federation. Written testimony. EXHIBIT 3

Kenneth Knapp, Executive Director, Montana River Action Network, supported HB 472.

Barry Hedrick, Montana Stockgrowers Association. Written testimony. EXHIBIT 4

Glenn Marx, Policy Director, Governor Racicot's Office. Written Testimony. EXHIBIT 5

Tape 1, Side B

Debbie Smith, Sierra Club, supported HB 472.

Robin Cunningham, Executive Director, Fishing Outfitters Association, supported HB 472.

Janet Ellis, Montana Audubon Council, supported HB 472.

Paul Roos, Landowner, said he owns a piece of property and is in jeopardy of losing the water rights. HB 472 is an opportunity to protect those water rights, to help downstream water users and help the fish.

Jo Brunner supported HB 472 and urged its passage.

Bob Lane, Chief Legal Counsel, Department of Fish, Wildlife and Parks, said since 1989 the department has had a pilot program for leasing instream water for instream purposes. The program has similar constraints and protection as HB 472 within it. The

department offered its experience to those who might be engaging in the use of water rights for instream purposes. Mr. Lang distributed the department's latest progress report. EXHIBIT 6

Ann Hedges, Montana Environmental Information Center, supported HB 472.

Opponents' Testimony: None

Informational Testimony: None

Questions From Committee Members and Responses: None

Closing by Sponsor:

REP. KNOX distributed amendments to HB 472 and asked the committee to retain them until executive action is taken. EXHIBIT 7 The competing interests that have been at odds for so many years on this issue have finally come together. This is an historic occasion.

CHAIRMAN KNOX resumed the Chair.

HEARING ON HB 478

Opening Statement by Sponsor:

REP. ROBERT STORY, House District 24, Park City, said HB 478 proposes to revise the Natural Streambed and Land Preservation Act of the 310 law. REP. STORY distributed a document that explained the proposed changes. EXHIBIT 8 Conservation districts have 20 years experience administering this act and are experiencing a large increase in the number of applications processed each year. There is getting to be more and more activity on streams and more problems are arising because of people doing work in the streams and not going through the permitting process or not completing the activities called for in the permit. The proposed changes have been requested by conservation districts to expedite the permit process and to address some of the ambiguities in the current law.

Proponents' Testimony:

Paul Kronebusch, Supervisor, Pondera County Canal and Reservoir Company, said HB 478 is the tool that would help monitor what is happening on the streams and stream banks in Montana.

Mike Voleski, Montana Association of Conservation Districts, said the 310 law is taking up an inordinate amount of time for conservation districts. In 1982 there were 600 permit applications annually in conservation districts throughout the state. Presently there are approximately 1,500 permit applications annually. HB 478 will streamline the permit process.

EXECUTIVE ACTION ON HB 341

Discussion:

REP. KARL OHS gave the subcommittee's report on HB 341.

Motion/Vote: REP. BILL TASH MOVED TO TABLE HB 341. Voice vote was taken. Motion carried 13 to 5. REP. HAL HARPER, REP. CARLEY TUSS, REP. BOB RANEY, REP. DAVID EWER AND REP. JON ELLINGSON voted no.

EXECUTIVE ACTION ON SB 203

Motion: REP. STORY MOVED SB 203 DO PASS.

Discussion:

REP. LILA TAYLOR asked that executive action be postponed on SB 203 because her constituents had a lot of questions on the bill and she would like to discuss it with them.

REP. STORY withdrew his motion.

CHAIRMAN KNOX postponed executive action on SB 203.

Tape 6, Side B

EXECUTIVE ACTION ON HB 412

Motion: REP. SCOTT ORR MOVED HB 412 DO PASS.

Motion: REP. ORR MOVED DO PASS ON AMENDMENTS TO HB 412. EXHIBIT 55

Discussion:

REP. ORR explained the amendments.

Vote: Voice vote was taken. DO PASS motion on the amendments carried unanimously.

Motion/Vote: REP. ORR MOVED HB 412 DO PASS AS AMENDED. Voice vote was taken. Motion carried 16 to 2. REP. BOB RANEY and REP. DAVID EWER voted no.

EXECUTIVE ACTION ON HB 472

Motion: REP. DICK KNOX MOVED HB 472 DO PASS.

Discussion:

Mr. Kakuk explained the amendments to HB 472. EXHIBIT 56

Motion/Vote: REP. KNOX MOVED DO PASS ON THE AMENDMENTS. Voice vote was taken. Motion carried unanimously.

Motion/Vote: REP. HAL HARPER MOVED HB 472 DO PASS AS AMENDED. Voice vote was taken. Motion carried unanimously.

EXECUTIVE ACTION ON HB 478

Motion: REP. ROBERT STORY MOVED HB 478 DO PASS.

Discussion:

REP. STORY said he had some amendments to the bill but hadn't received them from the EQC staff. Mr. Kakuk said he had the conceptual amendments and as far as the EQC staff is concerned, there isn't anything controversial in the amendments. If the committee wanted to act on the amendments there wouldn't be any problem adopting them as conceptual.

REP. STORY proposed additional amendments to strike the word "significant" and insert the word "adverse" on page 2, line 5 and to strike "of not less than \$25 or more than" and insert not to exceed more than \$500" on page 8, line 14 of the bill.

Motion/Vote: REP. STORY MOVED DO PASS ON THE AMENDMENTS. Voice vote was taken. Motion carried unanimously.

Motion/Vote: REP. STORY MOVED HB 478 DO PASS AS AMENDED. Voice vote was taken. Motion carried unanimously.

EXECUTIVE ACTION ON HB 483

Motion/Vote: REP. STORY MOVED TO TABLE HB 483. Voice vote was taken. Motion carried 14 to 4. REP. AUBYN CURTISS, REP. PAUL SLITER, REP. DOUG WAGNER and REP. SCOTT ORR voted no.

HOUSE OF REPRESENTATIVES

Natural Resources

ROLL CALL

DATE 2-13-95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Dick Knox, Chairman	✓		
Rep. Bill Tash, Vice Chairman, Majority	✓		
Rep. Bob Raney, Vice Chairman, Minority	✓		
Rep. Aubyn Curtiss	✓		
Rep. Jon Ellingson	✓		
Rep. David Ewer	✓		
Rep. Daniel Fuchs	✓		
Rep. Hal Harper	✓		
Rep. Karl Ohs	✓		
Rep. Scott Orr	✓		
Rep. Paul Sliter	✓		
Rep. Robert Story	✓		
Rep. Jay Stovall	✓		
Rep. Emily Swanson	✓		
Rep. Lila Taylor	✓		
Rep. Cliff Trexler	✓		
Rep. Carley Tuss	✓		
Rep. Doug Wagner	✓		

DNRC on the program itself as well as a legislative report in the year 2001. The governor accepts that obligation and hopes to see the Consensus Council continue its constructive involvement on this issue, the future working group and the report itself.

Thank you for the opportunity to testify and the governor urges passage of the bill.

EXHIBIT 5
DATE 2-13-95
HB 472

House Natural Resources Committee
Monday, February 13, 1995
Testimony In Support Of House Bill 472
Glenn Marx, Policy Director, Governor Racicot's Office

Mr. Chairman, for the record I'm Glenn Marx and I serve as policy director for Governor Marc Racicot.

The Racicot Administration rises in enthusiastic support of this bill and pledges a strong commitment to assist with its successful implementation.

There are a few critical components of this bill which bear added emphasis.

One, the bill respects -- and works within -- the prior appropriation system to provide agriculture water users new options in water management and income potential.

Two, the basis for the instream flow agreement is completely voluntary.

Three, the water needed to preserve instream flow can only be obtained through a temporary lease.

Fourth, the water leased is enough to maintain fish and aquatic life.

That means no public trust doctrine, no government mandated actions or "takings," no permanent water sales and only enough leased water to keep fish alive, not enough leased water to keep boats and water-based recreation afloat.

What that all tells us, Mr. Chairman, is that the group who put this bill together did its work in a precise, careful and thoughtful fashion. They did the job right, and Governor Racicot both respects and applauds their efforts and their product.

This is another example of how the Consensus Council can take an issue and transform that issue into a solution that works in Montana's best interest. Congratulations to the Council and those who worked on this bill.

The carefully conceived and voluntary instream flow protection plan proposed in this bill clearly provides needed protection to fish and streams, but it also provides a potentially new and exciting opportunity for landowners and irrigators to modify water management to retain existing agriculture income and add a new source of income. Such resource and financial gains can help individual ranchers and Montana's rural economies.

Finally, Mr. Chairman, the Statement of Intent directs the governor to "monitor and review" the instream flow protection program and to convene a broad-based working group to work with

EXHIBIT 4
DATE 2-13-95
HB 472

Statement of Barry R. Hedrich, P.O. Box 93, Ringling, MT 59642

I commend the efforts of the consensus council and the legislature in their efforts to manage the issue of streamflow enhancement.

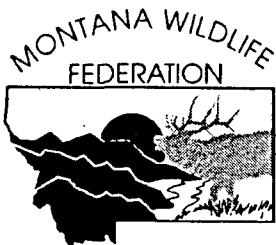
I am encouraged by legislation which is not cumbersome but which is simple and builds upon the prior appropriation water rights system which works.

I am encouraged by legislation which allows individuals the right to negotiate the value of a resource and terms of use without the involvement of governmental agencies.

I am encouraged by affected groups and individuals striving to put differences aside, finding common ground and agreeing on beneficial solutions to Montana's water resource management without the threat of judicial mandates, costly and frivolous legal action or sweeping changes in Montana water law.

HB 472 provides a sound mechanism by which quantities of water may be acquired to maintain and enhance streamflow during critical periods of the year.

I urge your support and approval of HB 472.



MONTANA WILDLIFE FEDERATION

P.O. Box 1175,
Helena, MT 59624

Ph. 406-449-7604
Fax 406-449-8946

February 12, 1995

EXHIBIT 3
DATE 2-13-95
HB 472

House Natural Resources Committee
Helena, Montana

Chairman Knox and Committee Members:

I am Alan Rollo from Great Falls with the Montana Wildlife Federation, requesting your support for House Bill 472.

As you are aware of, water in Montana can be a very contentious issue and especially the issue of instream flow. For the last eight months several people from state wide organizations sat down to hammer out a compromise that would prevent this problem from escalating. We worked very hard to find a compromise to satisfy all participants and put this issue behind us. This process was not easy but an agreement has been achieved and the bill before you is the proof we succeeded.

The changes to existing law were minimal but required to make this process work. So what is different than previous years where similar bills were met with significant opposition. We started at square one, looked at everyone's needs and built a solid base, one block at a time - a very slow process but one that was built to be strong. I know everyone made a sincere effort to make this process work and I feel proud to have participated on this consensus approach.

You have heard the main elements about this bill but the key parts that I want to stress again are: that this bill works within the prior appropriation system, it does protect junior and senior water right holders, it is strictly voluntary and you will receive briefings on its' progress.

So please give HB 472 favorable consideration so we can allow this instream flow idea to work.

Thank you.

Sincerely,

Alan Rollo
Montana Wildlife Federation

leasing activities and evaluate resulting impacts or problems. If the leasing process is working as hoped, it is reasonable to assume that the provisions of this legislation would continue.

House Bill 472 provides an opportunity for input from those who may be impacted prior to the actual application for a temporary change in order to determine the extent and reason for concerns. By determining in advance the extent and rational of concerns, confrontations may be averted, and reduce the extent of objections that may arise as a result of a proposed lease.

We also feel that it is appropriate as provided for within this bill, that the owner of the involved water right retain sole responsibility and authority for any enforcement requirements that may be necessary during the term of the lease and temporary change for instream use. It is also appropriate that the owner of the involved water right retain sole responsibility and authority for initiating any objection that may be brought against future temporary change of use requests made by the owners of other water rights.

This legislation would establish a significant change from historic use. Positive results are possible for both agriculture and the state's fisheries. Again, our primary concerns are to maintain the integrity of the prior appropriation doctrine and to ensure appropriate protection of existing water rights. If in fact, existing water rights are impacted as the result of activity initiated under the provisions of this legislation, there must be adequate opportunity for objection and resolution.

We feel that these concerns are addressed within House Bill 472. Thank you.

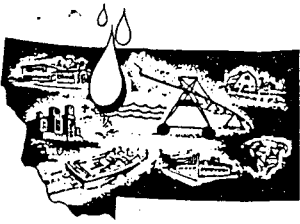


EXHIBIT 2
DATE 2-13-95
HB 472



501 N. Sanders, Suite #4 • Helena, Montana 59601 • (406) 442-9666

MONTANA WATER RESOURCES ASSOCIATION
Testimony Regarding HB 472
Provided to
HOUSE NATURAL RESOURCES COMMITTEE
February 13, 1995

Mr. Chairman, Members of the Committee. For the record, I'm Mike Murphy, representing the Montana Water Resources Association. The Association supports House Bill 472.

Agriculture has always been concerned for and is a strong advocate of the environment. While Montana farmers and ranchers have utilized their private water rights to produce food and fiber for the nation and the world, those same rights have been used to enhance both wildlife and fisheries resources. In fact, our fisheries are among the best in the nation.

House Bill 472 advances opportunities to further enhance our fishery resources by facilitating the leasing of water rights for instream use. We are confident that these opportunities can be fostered while protecting the principles of the Prior Appropriation Doctrine and temporary water right change process.

Ultimately, as a win-win concept, this legislation must address concerns regarding the need to protect private property rights with those of the environment. In addition, the enabling legislation must ensure that the manner of use of such private property rights will not adversely impact or cause injury to others or to the environment.

This legislation will sunset in ten years, if not reauthorized. Considering the significance of the change from historic uses, we feel this is appropriate and provides sufficient time to initiate

HB 472

EXHIBIT 1

DATE 2-13-95

HB 472

Testimony on behalf of the
Montana Chapter of the American Fisheries Society
before the
House Natural Resources Committee

February 14, 1995

Mr. Chairman and members of the committee, my name is Art Whitney and I am here on behalf of the Montana Chapter of the American Fisheries Society. The American Fisheries Society is an international organization of fisheries and aquatic professionals that promotes the wise use and management of fisheries and aquatic habitat. AFS is the oldest professional society in the United States and the Montana Chapter has about 160 members.

The Montana Chapter supports HB 472. The bill is the result of a unique coalition of water user interests sitting down and reaching consensus on ways to help resolve the problem of dewatered streams in Montana. Previous attempts to resolve the issue have been unsuccessful because the various interests groups had insufficient dialog prior to legislation being introduced. As a result, the legislation failed. This bill is different. It is the result of the different interests talking to each other to reach some agreement on the instream flow issue.

Currently, water leases for instream flow purposes can only be obtained by Montana Fish, Wildlife and Parks under a statute passed in the 1989 legislature. House Bill 472 would broaden the opportunity to improve instream flows in dewatered streams by allowing private individuals and other groups to either convert their existing water rights from a consumptive use to instream flow or for others to lease these rights from willing individuals and convert them to instream flow. Before the conversion could be allowed, approval from DNRC would be required so that the change would not adversely affect other existing water users.

We believe this bill is an important step toward improving fish habitat conditions in streams currently affected by low streamflows and will help protect and restore the important and valuable stream fisheries in Montana.

The Montana Chapter of the American Fisheries Society urges your support of HB 472.

Thank you.



HOUSE STANDING COMMITTEE REPORT

February 14, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Natural Resources report that House Bill 472 (first reading copy -- white) do pass as amended.

Signed: _____

Dick Knox

Dick Knox, Chair

And, that such amendments read:

1. Page 1, line 17.

Following: second "to"

Insert: "temporarily"

2. Page 1, line 20.

Following: "governor", "convene", and "basis"

Strike: ", "

3. Page 2, line 26.

Following: "or"

Insert: "allow"

4. Page 10, line 20.

Following: "(4)"

Insert: "(a)"

5. Page 10, lines 22 through 24.

Strike: "Except" on line 22 through "permit." on line 24

Insert: "(b) An appropriator, other than an appropriator identified in subsection (7), may object:

(i) during the initial temporary change application process;

(ii) during the temporary change renewal process; and

(iii) once during the term of the temporary change permit."

Committee Vote:

Yes/8, No 0.

381118SC.Hbk

EXHIBIT 6
DATE 2-13-95
HB 472

ANNUAL PROGRESS REPORT WATER LEASING PROGRAM

November 30, 1994

Submitted to:

Montana Water Policy Committee
Montana Board of Natural Resources and Conservation
and
Montana Fish, Wildlife and Parks Commission

Submitted by:

Montana Fish, Wildlife and Parks
Fisheries Division

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INTRODUCTION	1
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APPENDIXES

Appendix A, Mill Creek Flows - 1994	A1
Appendix B, Flow Monitoring Plan - Blanchard Creek Lease.	A2

Report not copied.
Please call State Law
Library (444-3660) if you
would like the full report.

Amendments to House Bill No. 472
First Reading Copy

Requested by Rep. Knox
For the Committee on Natural Resources

Prepared by Michael S. Kakuk
February 13, 1995

1. Page 1, line 17.
Following: second "to"
Insert: "temporarily"
2. Page 1, line 20.
Following: "governor", "convene", and "basis"
Strike: ", "
3. Page 2, line 26.
Following: "or"
Insert: "allow"
4. Page 10, line 20.
Following: "(4)"
Insert: "(a)"
5. Page 10, lines 22 through 24.
Strike: "Except" on line 22 through "permit." on line 24
Insert: "(b) An appropriator, other than an appropriator
identified in subsection (7), may object:
(i) during the initial temporary change application
process;
(ii) during the temporary change renewal process; and
(iii) once during the term of the temporary change
permit."

SENATE NATURAL RESOURCES

Page 2

- BILL NO - REFERRED - HEARING - OTHER CONSIDERATION DATES - EXECUTIVE ACTION/DATE/VOTE ----- REREFERRED ---- DATE READ

HB0351	PECK, RAY		CLARIFY DISPOSAL OF CERTAIN UNIVERSITY LAND			
	2/21	3/10		CONCUR AS AMENDED	VOTE:	3/21
HB0381	KNOX, DICK		METAL MINE RECLAMATION ACT REVISIONS			
	2/20	3/01		CONCUR	VOTE:	3/08
HB0412	ORR, SCOTT		ENVIRONMENTAL SELF-EVALUATION REPORT, DISCLOSURE, AND PROTECTIONS			
	2/21	3/13		CONCUR AS AMENDED	VOTE:	3/27
HB0461	RYAN, WILLIAM		CREATE MONTANA EMERGENCY RESPONSE TO HAZARDOUS MATERIAL INCIDENTS ACT			
	2/27	3/08		CONCUR	VOTE:	3/10
HB0472	KNOX, DICK		INSTREAM FLOW -- AUTHORIZATIONS -- LIMITATIONS			
	2/21	3/15		CONCUR	VOTE:	3/21
HB0473	KNOX, DICK		SUBDIVISION REVISION			
	2/27	3/15		CONCUR AS AMENDED	VOTE:	3/24
HB0478	STORY, ROBERT		310 PERMIT REVISIONS			
	2/27	3/13		CONCUR AS AMENDED	VOTE:	3/20
HB0489	GRADY, ED		ALLOW SALE/EXCHANGE OF CERTAIN STATE LANDS; COMMUNITY OR PUBLIC USE FACTORS			
	2/27	3/08		CONCUR	VOTE:	3/10
HB0521	WAGNER, DOUGLAS		REQUIRE STATE AND LOCAL AGENCIES TO JUSTIFY ENVIRONMENTAL STANDARDS			
	3/24	3/27		CONCUR AS AMENDED	VOTE:	3/28
HJ0010	KNOX, DICK		INTERIM STUDY OF NATURAL RESOURCE COMPLIANCE AND ENFORCEMENT PROGRAMS			
	2/07	3/03		CONCUR	VOTE:	3/08
HJ0022	TASH, BILL		JR URGING DHES TO ADOPT AN AIR QUALITY RULE FOR MINOR CHANGES IN PERMITS			
	2/21	3/10		CONCUR	VOTE:	3/13
HJ0024	HARPER, HAL		STREAMSIDE CORRIDOR PROTECTION -- CONSENSUS GROUP			
	2/27	3/10		TABLED ON 03/21	VOTE:	

MINUTES

**MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON NATURAL RESOURCES

Call to Order: By CHAIRMAN LORENTS GROSFIELD, on March 15, 1995,
at 3:30 PM

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Larry J. Tveit, Vice Chairman (R)
Sen. Mack Cole (R)
Sen. William S. Crismore (R)
Sen. Mike Foster (R)
Sen. Thomas F. Keating (R)
Sen. Ken Miller (R)
Sen. Vivian M. Brooke (D)
Sen. B.F. "Chris" Christiaens (D)
Sen. Jeff Weldon (D)
Sen. Bill Wilson (D)

Members Excused: None

Members Absent: None

Staff Present: Todd Everts, Environmental Quality Council
Mickhael Kakuk, Environmental Quality Council
Theda Rossberg, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 472, HB 473,
Executive Action: SB 382

{Tape: 1; Side: B;}

HEARING ON HB 472

Opening Statement by Sponsor:

REPRESENTATIVE DICK KNOX, House District 93, Winifred, presented
HB 472. He handed out printed material, EXHIBIT 1. SB 346,
which was tabled last session, called for the sale of water for

instream flow. It was tabled because it permanently severed the water from the land. He believed this issue needed to be dealt with. No one likes to see a dry streambed. HB 472 is the result of a tremendous amount of interim work. The organizations involved were: Montana Farm Bureau Federation, Montana Stockgrowers Association, Montana Water Resources Association, Montana Association of Conversation Districts, Montana Trout Unlimited, and the Montana Wildlife Federation. This is a consensus bill. The bill authorizes the temporary use of existing water rights for instream flow to benefit the fishery resource. It allows any private individual or association to lease an existing water right from a land owner. It also allows the owner of a water right to temporarily change the use of that water right to an instream use to benefit the fishery resource. There are many safeguards to protect the private property rights of existing water users. It allows any potentially affected person to provide input and advice before the application for a change in water use is submitted to the DNRC.

Proponents' Testimony:

Robert Hanson, Montana Farm Bureau Federation, stated the best part of this bill is that it will allow both factions to be proactive. They spent eight months working on this bill and are very pleased with the outcome.

John Bloomquist, Montana Stockgrowers' Association, stated he worked with the group on this bill and that the Stockgrowers fully support HB 472. This does not involve the sale of water for instream use. When water is removed from the land, some of the ramifications are unknown. The mechanism which was chosen to implement the change from a consumptive use and irrigation use to the instream use for the benefit of the fishery was the temporary change provision under present law.

Mr. Bloomquist stated that the main crux of the bill is in Section 1, pages 1 and 2. There are two ways an applicant can change water to an instream use. The first is found on page 2, lines 3-8. If a water right owner chooses to leave a portion of that right instream and be administered instream, they could apply to the Department for temporary change and go through the process. The second way that water could be administered instream is to lease it. Under this bill, any person could go to a water right holder and lease the water for instream use. They would need to go through the process of applying for the change from irrigation use to instream use and get the approval from the DNRC.

Mr. Bloomquist said that under this bill the definition of "person" is an individual, association, partnership or corporation. This would not involve the Department of Fish, Wildlife, and Parks or other state or federal agencies. This bill deals with the private sector participating if they so

choose. The measuring point is specifically stated and will not adversely affect the water rights of other persons. This provision should prevent some of the problems with past bills which looked at the reach concept and tried to protect large reaches of streams by moving points of measurement around where potential water right users could be affected.

Mr. Bloomquist added that another part of the bill specific to instream issues is that there needs to be a showing that the water is needed to maintain or enhance instream flows to benefit the fishery. They wanted to avoid the idea of leasing water simply for the sake of leasing water. Pages 10 and 11 of the bill state the ability to object to a proposed change to instream use. Other water right users have the opportunity to object during an initial temporary change application process. If there is a renewal, they have the right to object at that point. They also have the right to object during the term of the lease or during the term of the temporary authorization. Many times another water user may not be aware or have the documentation to show adverse effect. They wanted them to have the ability to come in and explain any effect by the change and have the DNRC look at it and either modify or change the temporary change provision. They fully support this measure.

Kirk Evenson, Trout Unlimited, emphasized the importance of the process which lead to this bill that brought two opposing sides together. This bill is not a panacea for all water use debate. It is a constructive start to diffusing a controversy over instream flows in the state of Montana. Passing this legislation would be a positive signal that the Legislature believes that consensus negotiations among Montanans is a very good thing.

Mike Murphy, Montana Water Resources Association, presented his written testimony in support of HB 472, EXHIBIT 1.

Alan Rollo, Montana Wildlife Federation, presented his written testimony in support of HB 472, EXHIBIT 2.

Glenn Marx, Governor's Office, presented his written testimony in support of HB 472, EXHIBIT 3.

Larry Brown, Agricultural Preservation Association, stated it has been twenty years since the instream flow process first started. On page 11, line 1, the language "once during the term of the temporary change permit" gives the interested parties the opportunity to object to the situation if it is not working.

Janet Ellis, Montana Audubon Legislative Fund, stated that they support the bill. She said they believed the Consensus Council did an excellent job facilitating this process.

Debby Smith, Montana Chapter of the Sierra Club, stated their support of this bill.

Art Whitney, Montana Chapter of the American Fisheries Society, presented his written testimony, **EXHIBIT 4.** He commented that this bill is an important step toward improving fish habitat in streams.

Robert Lane, Department of Fish, Wildlife & Parks, presented his written testimony in support of HB 472, **EXHIBIT 5.** He also handed out their "Annual Progress Report Water Leasing Program - 1994" (**EXHIBIT 6**) which summarizes the progress they have made and some of the projects which have been completed under their program.

Franklin Rigler stated his support of HB 472. He has had first hand experience water leasing for the Fish and Game. This bill does not change the point of measurement.

Opponents' Testimony: None

Questions From Committee Members and Responses:

SENATOR MACK COLE asked **Mr. Bloomquist** what protection there would be for an agricultural person who had problems after the lease and felt that he was not getting his full share of water.

Mr. Bloomquist stated there were three areas that would address this. When the DNRC considers an application for a change in water right, one of the elements it considers is found in § 85-2-402 which states that other water users would not be adversely affected by that change. Under this bill, the temporary change mechanism found in § 85-2-407 still exists. Part of what the applicant must show on the proposed change to instream use is that other water users will not be adversely affected. In addition, the temporary change authorization for the instream flow as measured at a point, will not adversely affect the water rights of other persons. Under this bill, wherever the instream flow right would be administered or where the call would be placed would be at a point where other water users will not be injured. They would not be able to go over the measuring points downstream and go over junior users because that would subject those new users to a call that they had not previously been subject to and have an adverse effect.

SENATOR CHRIS CHRISTIAENS asked for information on the Consensus Council. It was his understanding that the funding for the Consensus Council was not in the budget. He asked about its future role.

Mr. Marx stated that if the Consensus Council is not funded, it's future is uncertain. The Governor's Office believes that they have provided some very good examples of positive work and they would like to see the program remain in place. Private funding is always an option. The office has been in existence for a year and a half and a base of support from HB 2 would be an important step to keep the Council fully operational.

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SENATOR VIVIAN BROOKE, referring to the "objection" which is built into the bill, asked Mr. Bloomquist if he would envision that this objection could go to court?

Mr. Bloomquist stated a contested case hearing would be conducted under MEPA and could end up in court.

SENATOR BROOKE asked who would pay the court cost if the objector prevails?

Mr. Bloomquist stated there was no loser pay provision under that scenario. There was a lengthy discussion whether the loser, particularly at the agency level, should have to pay the other party as to costs and attorneys fees. The agricultural community was a little concerned with that because this would have a chilling effect on objections to these interests. Ranchers may not have a valid objection at first, but the right to object should be preserved. Many times a change application comes in on the last day to file an objection. An objection is then filed to preserve those rights and then they are able to go over the information involved.

SENATOR BROOKE asked Mr. Lane how long it took to determine the need for a fishery resource?

Mr. Lane stated their biologists usually have a pretty good idea of the streams which are having fisheries problems due to low water. They have summaries and opinions on most of the streams in the state. In their water leasing program, they already know critical streams and which streams would be good candidates for spawning purposes if they had more water on a regular basis.

Closing by Sponsor:

REPRESENTATIVE KNOX stated he believed the bill would work. This is a wide open process for a willing buyer and a willing seller. Where there is an established instream need and there are people or organizations which are interested in purchasing water and there is an existing water source there, these two parties have every opportunity to come to a meeting of the minds.

HEARING ON HB 473

Opening Statement by Sponsor:

REPRESENTATIVE DICK KNOX, House District 93, Winifred, presented HB 473. He stated there have been comments that HB 473 creates an unfunded mandate upon the cities and counties of Montana. He has not signed the fiscal note because it was based on an erroneous assumption that the costs associated with implementing

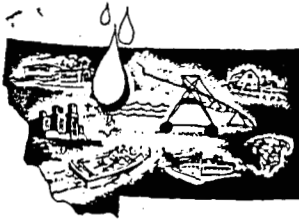
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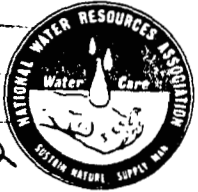


SENATE NATURAL RESOURCES

EXHIBIT NO. 1

DATE 3-15-95

HB 472



501 N. Sanders, Suite #4 • Helena, Montana 59601 • (406) 442-9666

MONTANA WATER RESOURCES ASSOCIATION
Testimony Regarding HB 472
Presented to
SENATE NATURAL RESOURCES COMMITTEE
March 15, 1995

Mr. Chairman, Members of the Committee. For the record, I'm Mike Murphy, representing the Montana Water Resources Association. The Association supports House Bill 472.

Agriculture has always been concerned for and is a strong advocate of the environment. House Bill 472 advances opportunities to further enhance fishery resources by facilitating the leasing of water rights for instream use. We are confident that these opportunities can be fostered while protecting the principles of the Prior Appropriation Doctrine and temporary water right change process.

Ultimately, as a win-win concept, this legislation must address concerns regarding the need to protect private property rights and the environment. In addition, the enabling legislation must ensure that the manner of use of such private property rights will not adversely impact or cause injury to others or to the environment.

This legislation will sunset in ten years, if not reauthorized. Considering the significance of the change from historic uses, we feel this is appropriate and provides sufficient time to initiate leasing activities and evaluate resulting impacts or problems. If the leasing process is working as hoped, it is reasonable to assume that the provisions of this legislation would continue.

"Montana's Voice for Montana's Water"

MWRA Testimony Regarding HB 472
Presented February 13, 1995
Page 2

House Bill 472 provides an opportunity for input from those who may be impacted prior to the actual application for a temporary change in order to determine the extent and reason for concerns. By determining in advance the extent and rational of concerns, confrontations may be averted, and reduce the extent of objections that may arise as a result of a proposed lease. If in fact, existing water rights are impacted as the result of an action provided for under the provisions of this legislation, there must be adequate opportunity for objection and resolution. Such oppportunity for objections is provided for in HB 472.

We also feel that it is appropriate as provided for within this bill, that the owner of the involved water right retain sole responsibility and authority for any enforcement requirements that may be necessary during the term of the lease and temporary change for instream use. It is also appropriate that the owner of the involved water right retain sole responsibility and authority for initiating any objection that may be brought against future temporary change of use requests made by the owners of other water rights.

This legislation would establish a significant change from historic use. Positive results are possible for both agriculture and the state's fisheries. Again, our primary concerns are to maintain the integrity of the prior appropriation doctrine and to ensure appropriate protection of existing water rights. We feel that these concerns are addressed within House Bill 472.

Thank you.

P.O. Box 1175,
Helena, MT 59624Ph. 406-449-7604
Fax 406-449-8946

March 15, 1995

SENATE NATURAL RESOURCES

AMEND NO. 2DATE 3-15-95BILL NO. HB-472Senate Natural Resources Committee
Helena, Montana

Chairman Grosfield and Committee Members:

I am Alan Rollo from Great Falls with the Montana Wildlife Federation, requesting your support for House Bill 472.

As you are aware of, water in Montana can be a very contentious issue and especially the issue of instream flow. For almost a year several people from state wide organizations sat down to hammer out a compromise that would prevent this problem from escalating. We worked very hard to find a compromise to satisfy all participants and put this issue behind us. This process was not easy but an agreement has been achieved and the bill before you is the proof we succeeded.

The changes to existing law were minimal but required to make this process work. So what is different than previous years where similar bills were met with significant opposition. We started at square one, looked at everyone's needs and built a solid base, one block at a time - a very slow process but one that was built to be strong. I know everyone made a sincere effort to make this process work and I feel proud to have participated on this consensus approach.

You have heard the main elements about this bill but the key parts that I want to stress again are: that this bill works within the prior appropriation system, it does protect junior and senior water right holders, it is strictly voluntary and you will receive briefings on its' progress.

So please give HB 472 favorable consideration so we can allow this instream flow idea to work.

Thank you.

Sincerely,

Alan Rollo
Montana Wildlife Federation

Senate Natural Resources Committee
Wednesday, March 15, 1995
Testimony In Support Of House Bill 472
Glenn Marx, Governor Racicot's Office

Mr. Chairman, for the record I'm Glenn Marx and I serve as policy director for Governor Marc Racicot.

The Racicot Administration rises in enthusiastic support of this bill and pledges a strong commitment to assist with its successful implementation.

There are a few critical components of this bill which bear added emphasis.

One, the bill respects -- and works within -- the prior appropriation system to provide agriculture water users new options in water management and income potential.

Two, the basis for the instream flow agreement is completely voluntary.

Three, the water needed to preserve instream flow can only be obtained through a temporary lease.

Fourth, the water leased is enough to maintain fish and aquatic life.

That means no public trust doctrine, no government mandated actions or "takings," no permanent water sales. What that all tells us, Mr. Chairman, is that the group who put this bill together did its work in a precise, careful and thoughtful fashion. They did the job right, and Governor Racicot both respects and applauds their efforts and their product.

Like state lands access, this bill represents another example of how the Montana Consensus Council can take an issue and transform that issue into a solution that works in Montana's best interest.

Finally, Mr. Chairman, the Statement of Intent directs the governor to "monitor and review" the instream flow protection program and to convene a broad-based working group to work with DNRC on the program itself as well as a legislative report in the year 2001. The governor accepts that obligation and hopes to see the Consensus Council continue its constructive involvement on this issue, the future working group and the report itself.

Thank you for the opportunity to testify and the governor urges passage of the bill.

HB 472

EXHIBIT NO. 4DATE 3-15-95

Testimony on behalf of the
Montana Chapter of the American Fisheries Society
before the
Senate Natural Resources Committee

BILL NO. HB 472

March 15, 1995

Mr. Chairman and members of the committee, my name is Art Whitney and I am here on behalf of the Montana Chapter of the American Fisheries Society. The American Fisheries Society is an international organization of fisheries and aquatic professionals that promotes the wise use and management of fisheries and aquatic habitat. AFS is the oldest professional conservation society in North America and the Montana Chapter has about 160 members.

The Montana Chapter supports HB 472. The bill is the result of a unique coalition of water user interests sitting down and reaching consensus on ways to help resolve the problem of dewatered streams in Montana. Previous attempts to resolve the issue have been unsuccessful because the various interest groups had insufficient dialog prior to legislation being introduced. As a result, the legislation failed.

This bill different. It is the result of these different interests talking to each other to reach some consensus on the instream flow issue.

Currently, water leases for instream flow can only be obtained by Montana Fish, Wildlife and Parks. House Bill 472 broadens the opportunity to improve instream flows in dewatered streams by allowing private individuals and groups to either convert their existing water rights from a consumptive use to instream flow or for others to lease these rights from willing individuals and convert them to instream flow. To protect existing water users, DNRC must approve such a change.

We believe this bill is an important step toward improving fish habitat conditions in streams currently affected by low streamflows and will help restore Montana's important stream fisheries.

The Montana Chapter urges your support of HB 472 as approved by the House.

Thank you.

SENATE NATURAL RESOURCES

EXHIBIT NO. 5

DATE 3-15-95

FILE NO. HB 472

THB472.SP

House Bill No. 472

March 15, 1995

Testimony presented by Robert Lane

Montana Fish, Wildlife & Parks

before the Senate Natural Resources Committee

Fish, Wildlife & Parks supports the concept of House Bill 472. We have been involved in our own water leasing program since 1989 and have realized some positive fishery benefits from the leases we have been successful in implementing. The 1994 water leasing report I am handing out to the committee summarizes our efforts and successes with the program. We would be happy to share our leasing experiences with those persons who would be able to lease water for instream flows if House Bill 472 is approved by the legislature.

We urge your support of the bill.

Attachment

SEN. COLE said one thing they may be hearing was that people were trying to tell the federal government they were not in favor of something that the Forest Service should make the decision on

Vote: MOTION TO CONCUR IN HJR 26, CARRIED WITH SEN. FOSTER AND SEN. COLE VOTING NO.

EXECUTIVE ACTION ON HB 472

Motion/Vote: SEN. WELDON MOVED TO CONCUR IN HB 472, MOTION CARRIED UNANIMOUSLY. (CHAIR. GROSFIELD will carry the bill)

EXECUTIVE ACTION ON HJR 24

Motion: SEN. COLE MOVED A TO ADOPT AMENDMENTS NO. hjr2401.ate AS CONTAINED IN EXHIBIT 5.

Discussion:

SEN. COLE reviewed the amendments with the committee members.

SEN. WELDON asked SEN. COLE about the 4th amendment, why he struck "sustained." He replied that just addressed it in a more positive manner.

SEN. WELDON said doesn't sustained mean "on going?" CHAIR. GROSFIELD said that was what that meant, and he could make a motion to change the amendment if he so desired.

SEN. BROOKE said it seemed that "sustained" modified how they were going to work on that, rather than sustained yield.

SEN. COLE said it seems everyone had a different idea of what "sustained" means, and therefore would be willing to change that to "on going."

Substitute Motion: SEN. COLE MOVED A SUBSTITUTE MOTION TO STRIKE "sustained," AND INSERT "on going," AND TO ADOPT AMENDMENTS NO.hjr2401.ate WITH THAT CHANGE.

Several of the proposed amendments were discussed by the committee members.

CHAIR. GROSFIELD said he hadn't heard anyone complain about amendments 2,3,4,5,6,9, and 10. He said he also had amendments to the bill that were a little bit different.

MONTANA SENATE
1995 LEGISLATURE
NATURAL RESOURCES COMMITTEE

ROLL CALL

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SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 21, 1995

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration HB 472 (third reading copy -- blue), respectfully report that HB 472 be concurred in.

Signed: *Lorents Grosfield*

Senator Lorents Grosfield, Chair

SV
SA Amd. Coord.
Sec. of Senate

L. GROSFIELD
Senator Carrying Bill

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